

1 BEFORE THE BOARD OF MEDICAL EXAMINERS

2
3 IN THE STATE OF ARIZONA

4 In the Matter of

5 **MARION A. JABCZENSKI, M.D.**

6 Holder of License No. **3812**
7 For the Practice of Medicine
8 In the State of Arizona.

**INVESTIGATION NOS. 1881, 10866,
11567 and 13072**

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER (Letter of Reprimand)**

9 **INTRODUCTION**

10 This matter was considered by the Arizona Board of Medical Examiners (Board) at
11 its public meeting on November 18, 1999 and March 8, 2000. Marion A. Jabczynski, M.D.
12 appeared before the Board with the legal counsel for the purpose of the Board conducting
13 a formal interview, pursuant to the authority vested in the Board by A.R.S. § 32-1451(G).
14 After due consideration of the facts and law applicable to this matter, the Board voted, at is
15 public meeting of April 26-28th, 2000, to issue the following findings of fact, conclusions of
16 law and order.

17 **FINDINGS OF FACT**

18 1. The Board is the duly constituted authority for the regulation and control of
19 the practice of medicine in the State of Arizona.

20 2. Dr. Jabczynski is the holder of License No. 3812 for the practice of medicine
21 in the State of Arizona.

22 3. Investigation No. 11567 was initiated after information was received
23 regarding a medical malpractice lawsuit filed against Dr. Jabczynski that alleged failure to
24 timely diagnose breast cancer in a 50-year old female (patient initials, "M.N.") resulting in a
25 delay in treatment.

1 4. Patient M.W. began seeing Dr. Jabczynski for routine mammograms in
2 1990 at his Breast Evaluation Center. Patient M.W. had intermittent complaints of breast
3 lumps and tenderness.

4 5. On July 28, 1994, patient M.W. had a mammogram performed which Dr.
5 Jabczynski interpreted as negative.

6 6. On July 6, 1995, Dr. Jabczynski noted a suspicious mass in the upper outer
7 quadrant of the right breast with abnormal findings on mammography. A biopsy was
8 performed, followed by a lumpectomy with axillary node dissection. Eight of fourteen
9 axillary nodes were positive. Patient M.W. subsequently had chemotherapy and radiation.
10 Two years post-operatively she was free of disease.

11 7. Dr. Jabczynski had his deposition taken on June 23, 1997, as part of the
12 medical malpractice lawsuit against him. During that deposition, Dr. Jabczynski had the
13 opportunity to review the July 28, 1994 mammogram of patient M.W. Dr. Jabczynski
14 admits that retrospectively, he can see a vague suspicion of the changes that became
15 more obvious in the film one year later in which he diagnosed suspicion of malignancy.

16 8. As part of the aforementioned malpractice lawsuit, Dr. T. Ditchek,
17 Department of Radiology, Good Samaritan Hospital, testified that Dr. Jabczynski did not
18 fall below the standard of care in reading the July 28, 1994 mammogram of patient M.W.
19 However, Dr. Laurie Fajardo, Professor of Radiology, University of Virginia, also testified
20 as part of the medical malpractice lawsuit, that Dr. Jabczynski's interpretation of the July
21 28, 1994 mammogram fell below the standard of care. In regard to Investigation No.
22 11567, the Board concludes that Dr. Jabczynski's medical care and judgment, in regard
23 to diagnosis and treatment of patient M.N., did not constitute unprofessional conduct.

24 9. Dr. Jabczynski has failed to comply with the Board's request to provide the
25 mammogram for patient M.W. to the Board for review. Board Investigative staff requested

1 the mammogram in their letters to Dr. Jabczynski, dated June 2, 1998, July 14, 1998, and
2 February 10, 1999. Dr. Jabczynski failed to comply the Board staff's requests and
3 subsequent interim order of the Board to deliver the aforementioned mammograms for
4 inspection and review. Dr. Jabczynski has asserted that he attempted with his staff office
5 to locate the aforementioned mammogram but could not.

6 10. On or about June 2, 1998, the Board's staff sent a letter to Dr. Jabczynski
7 informing him of the opening of Investigation File No. 11567 (patient "M.N.") and
8 requesting that he respond to the Board's letter and provide a written response to the
9 issues presented. He failed to acknowledge the Board's letter or provide the requested
10 written response. Subsequent letters were sent to Dr. Jabczynski by Board staff
11 requesting a written narrative explaining his treatment of the patient; and, Dr. Jabczynski
12 continued to not respond, until finally submitting a written explanation to the Board (dated
13 November 15, 1999). Additionally, Dr. Jabczynski appeared before the Board for a formal
14 interview, regarding Investigation No. 11567, on November 18, 1999.

15 11. As a result of the Board's formal interview proceeding with Dr. Jabczynski on
16 November 18, 1999, the Board and Dr. Jabczynski agreed to the issuance of a "Consent
17 Agreement for Interim Order", which was later issued on December 15, 1999. Said Interim
18 Order by stipulation provided as follows:

19 A. Dr. Jabczynski shall obtain the services of a Board pre-approved
20 Office Practice Management Consultant (hereafter "evaluator") to conduct an evaluation of
21 his office procedures and prepare a written report of findings regarding the physician's
22 office management practices. A copy of the evaluator's report shall be submitted to Board
23 staff within 60 days.

1 B. Dr. Jabczynski shall produce the previously requested mammogram taken of
2 patient M.W. on July 28, 1994, within 30 days, so that the Board can have the
3 mammogram reviewed by one of its medical experts.

4 C. The Board shall continue the formal interview proceeding for Dr.
5 Jabczynski at the Board's February 2-4, 2000 meeting. Dr. Jabczynski will be notified by
6 correspondence of the exact date and time that the continuation of his formal interview will
7 be held.

8 D. Dr. Jabczynski shall pay, in full, all previously ordered fines owed to
9 the Board prior to the February 2-4 Board meeting.

10 E. This is an interim order subject to modification and consideration by
11 the Board pursuant to the aforementioned terms and conditions of this Order and Consent
12 Agreement.

13 12. In regard to Board Investigation Files Nos. 1881 and 10866 a stipulated
14 interim order was accepted by Dr. Jabczynski and then issued by the Board on July 30,
15 1998. The aforementioned 1998 interim order specified that Dr. Jabczynski was to
16 undergo psychiatric, psychological/psychometric, and physical evaluations by those
17 individuals designated by Board staff.

18 13. Subsequently, it was reported to the Board, by Board Compliance Section
19 staff, that Dr. Jabczynski did not timely schedule and submit to the psychiatric evaluation
20 ordered by the Board, pursuant to the aforementioned 1998 stipulated interim order, within
21 the ninety (90) day time period specified; however, Dr. Jabczynski did submit to the
22 required psychological evaluation and medical evaluation within the specified time period.
23 The psychiatric evaluation was eventually conducted on March 19, 1999, by the Board's
24 designated psychiatrist.

1 14. The Board's 1993 disciplinary order against Dr. Jabczynski also included a
2 decree of censure for failure to furnish information to the Board in a timely manner and
3 failure to maintain adequate patient records and for inappropriate fees.

4 **CONCLUSIONS OF LAW**

5 1. The Board possesses jurisdiction over the subject matter hereof and over Dr.
6 Jabczynski, pursuant to A.R.S. § 32—1401, et seq.

7 2. The conduct and circumstances described above in paragraphs 11 to 13
8 constitutes unprofessional conduct pursuant to A.R.S. § 32-1401(25)(r) (violating
9 stipulated Board orders and consent agreements).

10 3. The conduct and circumstances described above in paragraph 9-10
11 constitute unprofessional conduct pursuant to A.R.S. § 32-1401(25)(dd) (failing to furnish
12 information in a timely manner to the board or its investigators or representative if legally
13 requested by the Board).

14 **ORDER**

15 Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby
16 ordered that:

17 1. A letter of reprimand be issued to Dr. Jabczynski for the aforementioned
18 unprofessional conduct; and,

19 2. Dr. Jabczynski is placed on probation for two (2) years from effective date of
20 this order and required to:

21 (A) Obtain psychotherapy from a Board approved and qualified health
22 care professional; and,

23 (B) The treating psychotherapist shall submit quarterly progress reports to
24 the Board; and,

25 (C) Comply with the medical office management report recommendations

1 submitted to the Board by Ms. Parks, management consultant. See, "Corrective Action
2 Report," prepared by Parks Healthcare, Inc. (dated January 2000), which is incorporated
3 herein by reference; and,

4 3. Board Investigation No. 13072 is dismissed; and, this Order shall
5 supercede and replace any other interim orders of the Board concerning all other above
6 referenced Board investigation files.

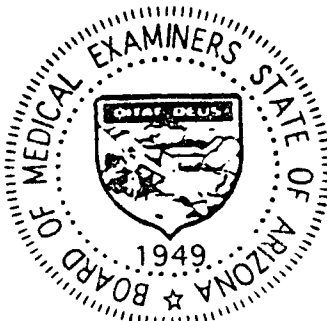
7 **RIGHT TO FILE MOTION FOR REHEARING OR REVIEW**

8 Dr. Jabczynski is hereby notified that he has the right to file a motion for rehearing
9 of this matter. Pursuant to A.R.S. § 41-1092.09, as amended, the motion for rehearing
10 must be filed with the Board's Executive Director within thirty (30) days after service of this
11 Order; and, pursuant to A.A.C. R4-16-102, said motion must set forth legally sufficient
12 reasons for granting a rehearing. Service of this Order is effective five (5) days after the
13 date of mailing. If a motion for rehearing is not filed, the Board's order becomes effective
14 thirty-five (35) days after it has been mailed.

15 Dr. Jabczynski is further notified that the filing of a petition for rehearing is required
16 to preserve any rights of appeal to the superior court that he may wish to pursue, pursuant
17 to A.R.S. § 41-1092.09(B).

18 DATED this 5 day of May, 2000.

19 BOARD OF MEDICAL EXAMINERS
20 OF THE STATE OF ARIZONA



By Tom Adams
CLAUDIA FOUTZ
Executive Director

1 **ORIGINAL** of the foregoing filed this
2 5th day of May, 2000, with:

3 The Arizona Board of Medical Examiners
4 1651 East Morten, Suite 210
5 Phoenix, AZ 85020

6 **EXECUTED COPY** of the foregoing mailed by
7 Certified Mail this 5th day of May, 2000, to:

8 Marion A. Jabczynski, M.D.
9 P.O. Box 33336
10 Phoenix, AZ 85067-3336

11 **COPY** of the foregoing mailed by U.S. Mail
12 this 5th day of May, 2000, to:

13 Stephen W. Myers
14 Attorney at Law
15 3003 N. Central Avenue, Suite 1900
16 Phoenix, Arizona 85012
17 Attorney for Respondent

18 **COPY** of the foregoing hand delivered this
19 5th day of May, 1999, to:

20 Board Counsel
21 The Arizona Board of Medical Examiners
22 1651 East Morten, Suite 210
23 Phoenix, AZ 85020

24 
25 Board Operations